IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

M.F.A.No.1419 of 1996(A)

O.P.(M.V).128/1991 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PERUMBAVOOR

.....

APPELLANTS/PETITIONERS:-

---

1. SHINY, D/O.ROSY JOSE, THEGUMTHARA VEEDU, MALAYATTOOR KARA, MALAYATTOOR VILLAGE.

2. ROSY JOSE, W/O.JOSE, THEGUMTHARA VEEDU, MALAYATTOOR KARA, MALAYATTOOR VILLAGE.

BY ADV. SRI.PHILIP T.VARGHESE

RESPONDENTS/RESPONDENTS:-

---

1. T.M.BENNY (K.K.VAREED), S/O.KURIAPPAN, KALIYANKARA HOUSE, PUTHENCHIRA P.O., IRINJALAKUDA.

2. MANY, S/O.SUBRAMANIYAM, THOTTIPARAMBIL VEEDU, MALAYATTOOR KARA, MALAYATTOOR VILLAGE.

3. THE ORIENTAL INSURANCE COMPANY LTD., BRANCH OFFICE, ANGAMALY.

R2 BY ADV. SRI.N.ANILKUMAR
SRI.D.SREEKUMAR.

R3 BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

SRI.RENJITH THAMPAN
SMT.P.A.ANITHA
SMT.P.R.REENA

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Padmanabhan Nair,J.

M.F.A.No.1419 of 1996-F

Dated, this the 27th day of March, 2007

JUDGMENT

This appeal is filed by the petitioners in O.P.(M.V.). No.128 of 1991 on the file of Motor Accidents Claims Tribunal, Perumbavoor. They filed petition claiming compensation against the respondents alleging that the 1st petitioner sustained an injury in a motor vehicle accident. It is averred that at about 11.00 A.M. on 21.10.1991 she was hit by a lorry being registration No.KRR 3756 and sustained injuries. It was alleged that the accident occurred due to the negligence of the driver of the lorry. The owner did not appear and contest. The driver and Insurer contested the matter. It was contended that there was no negligence on the part of the driver. The existence of valid policy was admitted by the Insurer. The Tribunal dismissed the application holding that the petitioners failed to establish that the 1st petitioner sustained any injury in a motor vehicle accident.

2. On the side of the appellants-petitioners, they produced Exhibit A4 certificate, which shows that the 1st appellant had sprain on right ankle and she was advised to take

rest from 21.10.1990 to 10.12.1990. Exhibit X1 produced at the instance of the Insurer shows that the 1st appellant was admitted in St.Thomas' Hospital, Malayattoor with a history of 'fall' and she had pain and swelling on the right ankle and there was fracture to the tip of tibia. The doctor who treated the 1st appellant was examined. He has stated that the alleged history was stated as due to fall. It is true that a criminal case was registered against the driver of the lorry. But, the case was registered on a private complaint filed long after the incident. Though the appellants examined two witnesses, the Tribunal rejected their evidence. I do not think, it will be just and proper to find that the appellant sustained injuries in a motor vehicle accident solely based on the oral evidence of witnesses. It cannot be said that the finding of the Tribunal is illegal or unsustainable. The appeal is only to be dismissed.

In the result, the appeal is dismissed.

K.Padmanabhan Nair
Judge

vku/-